

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 26, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHAYLA H.,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner  
of the Social Security Administration,

Defendant.

No: 1:19-CV-3257-FVS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 11, 15. This matter was submitted for consideration without oral argument. Plaintiff is represented by attorney Cory Brandt. Defendant is represented by Special Assistant United States Attorney Martha A. Boden. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court **GRANTS, in part**, Plaintiff's Motion for Summary Judgment, ECF No. 11, **DENIES** Defendant's Motion for Summary Judgment, ECF No. 15, and **REMANDS** the case for additional proceedings consistent with this Order.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT ~ 1

## JURISDICTION

Plaintiff Shayla H.<sup>1</sup> filed an application for Disability Insurance Benefits (DIB) on April 20, 2016, Tr. 549, alleging disability since December 5, 2015, Tr. 645, due to Crohn's disease, fibromyalgia, depression, anxiety, and muscle spasms in her back, Tr. 668. Benefits were denied initially, Tr. 568-74, and upon reconsideration, Tr. 576-80. A hearing before Administrative Law Judge Eric S. Basse ("ALJ") was conducted on February 23, 2018. Tr. 490-535. Plaintiff was represented by counsel and testified at the hearing. *Id.* The ALJ also took the testimony of vocational expert Jose L. Chaparro. *Id.* Plaintiff amended her onset date to February 17, 2014, at the hearing. Tr. 496. The ALJ denied benefits on September 6, 2018. Tr. 47-60. The Appeals Council denied Plaintiff's request for review on September 5, 2019. Tr. 1-6. The matter is now before this Court pursuant to 42 U.S.C. § 405(g).

## BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner. Only the most pertinent facts are summarized here.

Plaintiff was 29 years old at the amended onset date. Tr. 645. She completed

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<sup>1</sup>In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's first name and last initial, and, subsequently, Plaintiff's first name only, throughout this decision.

1 the twelfth grade in 2003. Tr. 669. Plaintiff's past work includes jobs as a cashier  
2 assistant, a retail customer service, and a photo center worker. *Id.* At application,  
3 she stated that she stopped working on December 5, 2015, due to her conditions. Tr.  
4 668.

### 5 STANDARD OF REVIEW

6 A district court's review of a final decision of the Commissioner of Social  
7 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
8 limited; the Commissioner's decision will be disturbed "only if it is not supported by  
9 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158  
10 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable  
11 mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and  
12 citation omitted). Stated differently, substantial evidence equates to "more than a  
13 mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted).  
14 In determining whether the standard has been satisfied, a reviewing court must  
15 consider the entire record as a whole rather than searching for supporting evidence in  
16 isolation. *Id.*

17 In reviewing a denial of benefits, a district court may not substitute its  
18 judgment for that of the Commissioner. "The court will uphold the ALJ's conclusion  
19 when the evidence is susceptible to more than one rational interpretation."  
20 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008). Further, a district court  
21 will not reverse an ALJ's decision on account of an error that is harmless. *Id.* An

1 error is harmless where it is “inconsequential to the [ALJ’s] ultimate nondisability  
2 determination.” *Id.* (quotation and citation omitted). The party appealing the ALJ’s  
3 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
4 *Sanders*, 556 U.S. 396, 409-10 (2009).

### 5 **FIVE-STEP EVALUATION PROCESS**

6 A claimant must satisfy two conditions to be considered “disabled” within the  
7 meaning of the Social Security Act. First, the claimant must be “unable to engage in  
8 any substantial gainful activity by reason of any medically determinable physical or  
9 mental impairment which can be expected to result in death or which has lasted or  
10 can be expected to last for a continuous period of not less than twelve months.” 42  
11 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be “of such severity  
12 that he is not only unable to do his previous work[,] but cannot, considering his age,  
13 education, and work experience, engage in any other kind of substantial gainful work  
14 which exists in the national economy.” 42 U.S.C. § 423(d)(2)(A).

15 The Commissioner has established a five-step sequential analysis to  
16 determine whether a claimant satisfies the above criteria. See 20 C.F.R. §  
17 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work  
18 activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in “substantial  
19 gainful activity,” the Commissioner must find that the claimant is not disabled. 20  
20 C.F.R. § 404.1520(b).

21 If the claimant is not engaged in substantial gainful activity, the analysis

1 proceeds to step two. At this step, the Commissioner considers the severity of the  
2 claimant's impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers from  
3 "any impairment or combination of impairments which significantly limits [her]  
4 physical or mental ability to do basic work activities," the analysis proceeds to step  
5 three. 20 C.F.R. § 404.1520(c). If the claimant's impairment does not satisfy this  
6 severity threshold, however, the Commissioner must find that the claimant is not  
7 disabled. 20 C.F.R. § 404.1520(c).

8 At step three, the Commissioner compares the claimant's impairment to severe  
9 impairments recognized by the Commissioner to be so severe as to preclude a person  
10 from engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(iii). If the  
11 impairment is as severe or more severe than one of the enumerated impairments, the  
12 Commissioner must find the claimant disabled and award benefits. 20 C.F.R. §  
13 404.1520(d).

14 If the severity of the claimant's impairment does not meet or exceed the  
15 severity of the enumerated impairments, the Commissioner must pause to assess the  
16 claimant's "residual functional capacity." Residual functional capacity ("RFC"),  
17 defined generally as the claimant's ability to perform physical and mental work  
18 activities on a sustained basis despite his or her limitations, 20 C.F.R. §  
19 404.1545(a)(1), is relevant to both the fourth and fifth steps of the analysis.

20 At step four, the Commissioner considers whether, in view of the claimant's  
21 RFC, the claimant is capable of performing work that he or she has performed in the

1 past (past relevant work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is capable  
2 of performing past relevant work, the Commissioner must find that the claimant is  
3 not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of performing  
4 such work, the analysis proceeds to step five.

5 At step five, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing other work in the national economy. 20  
7 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner must  
8 also consider vocational factors such as the claimant's age, education, and past work  
9 experience. 20 C.F.R. § 404.1520(a)(4)(v). If the claimant is capable of adjusting to  
10 other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
11 § 404.1520(g)(1). If the claimant is not capable of adjusting to other work, analysis  
12 concludes with a finding that the claimant is disabled and is therefore entitled to  
13 benefits. 20 C.F.R. § 404.1520(g)(1).

14 The claimant bears the burden of proof at steps one through four. *Tackett v.*  
15 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the  
16 burden shifts to the Commissioner to establish that (1) the claimant is capable of  
17 performing other work; and (2) such work "exists in significant numbers in the  
18 national economy." 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389  
19 (9th Cir. 2012).

## 20 THE ALJ'S FINDINGS

21 At step one, the ALJ found that Plaintiff has not engaged in substantial gainful

1 activity since February 17, 2014, the amended alleged onset date. Tr. 50. At step  
2 two, the ALJ found that Plaintiff has the following severe impairments: obesity;  
3 depression; and anxiety. Tr. 50. At step three, the ALJ found that Plaintiff does not  
4 have an impairment or combination of impairments that meets or medically equals  
5 the severity of a listed impairment. Tr. 50. The ALJ then found that Plaintiff has the  
6 RFC to perform light work as defined in 20 C.F.R. § 404.1567(b) except she has the  
7 following limitations:

8 the claimant can frequently climb ramps and stairs and she can  
9 occasionally climb ladders, ropes, or scaffolds. The claimant can  
10 frequently balance and stoop. She has no limitations on kneeling,  
11 crouching, and crawling. The claimant cannot be exposed to  
12 concentrated extremes of cold, vibrations, and hazardous conditions.  
The claimant can perform simple routine tasks and familiar learned  
detailed tasks. She may have occasional lapses of attention and  
concentration, but she can complete a normal workday and workweek  
with normal work breaks.

13 Tr. 52.

14 At step four, the ALJ identified Plaintiff's past relevant work as a sales  
15 attendant, an inventory clerk, and a security guard, and found that she is capable of  
16 performing her past relevant work as a sales attendant and a security guard. Tr 59.  
17 The ALJ concluded that Plaintiff has not been under a disability, as defined in the  
18 Social Security Act, from February 17, 2014 through the date of his decision. Tr. 59-  
19 60.

## 20 ISSUES

21 Plaintiff seeks judicial review of the Commissioner's final decision denying

her DIB under Title II. ECF No. 11. Plaintiff raises the following issues for this Court's review:

1. Whether the ALJ erred in weighing the medical source opinions;
2. Whether the ALJ properly considered Plaintiff's symptom claims;
3. Whether the ALJ properly weighed the lay witness statements; and
4. Whether the ALJ made a proper step four determination.

## DISCUSSION

### 1. Medical Source Opinions

Plaintiff challenges the weight the ALJ assigned to the medical opinions of William Drenguis, M.D., Esther Hunte, M.D., and Kirsten Nestler, M.D. ECF No. 11 at 6-11.

If a treating or examining physician's opinion is uncontradicted, the ALJ may reject it only by offering "clear and convincing reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). Conversely, "[i]f a treating or examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject it by providing specific and legitimate reasons that are supported by substantial evidence." *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)). Social Security Ruling (S.S.R.) 96-8p states that the RFC assessment "must always consider and address medical source opinions. If the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted."



1           **A. William Drenguis, M.D.**

2           On June 17, 2016, Dr. Drenguis completed a physical evaluation in which he  
3 diagnosed Plaintiff with inflammatory bowel disease and a history of fibromyalgia.  
4 Tr. 753-57. Dr. Drenguis opined that Plaintiff's maximum standing/walking capacity  
5 with normal breaks is at least four hours; her maximum sitting capacity with normal  
6 breaks is at least six hours; her maximum lifting/carrying capacity is 20 pounds  
7 occasionally and 10 pounds frequently; her maximum climbing, stooping, kneeling,  
8 crouching, and crawling is occasional; her maximum reaching, handling, fingering,  
9 and feeling is frequently; and she is limited around dust, fumes, and gases. Tr. 757.  
10 The ALJ gave the opinion "some weight" because it is "partially consistent with the  
11 overall evidence of record," stating that "it is consistent with the claimant's normal  
12 colonoscopy results and her stable Crohn's symptoms on medication . . . it is  
13 consistent with the claimant's physical examination findings that noted the claimant's  
14 normal motor strength, normal range of motion, intact sensation, and normal deep  
15 tendon reflexes." Tr. 56.

16           Here, the ALJ states why he accepted portions of the opinion, but he failed to  
17 state why he rejected other portions of Dr. Drenguis' opinion. Dr. Drenguis' opinion  
18 places Plaintiff between sedentary and light RFC, but the ALJ found Plaintiff capable  
19 of light work. Tr. 52. He also opined greater limitations in Plaintiff's postural  
20 abilities and the use of her upper extremity when compared to the ALJ's RFC. *Id.*

21           The RFC assessment "must always consider and address medical source opinions. If

1 the RFC assessment conflicts with an opinion from a medical source, the adjudicator  
2 must explain why the opinion was not adopted.” S.S.R. 96-8p. Therefore, the ALJ  
3 erred by failing to state why he failed to adopt these portions of Dr. Drenguis’  
4 opinion. The case is remanded for the ALJ to properly address Dr. Drenguis’  
5 opinion.

6 **B. Kirsten Nestler, M.D.**

7 On June 4, 2016, Dr. Nestler completed a psychological consultative  
8 examination. Tr. 748-52. She diagnosed Plaintiff with unspecified depressive  
9 disorder and unspecified anxiety disorder. Tr. 751. She opined that Plaintiff “may  
10 have difficulty performing work activities on a consistent basis without special or  
11 additional instructions and may have difficulty maintaining regular attendance in the  
12 workplace,” and she may have difficulty completing a normal workweek without  
13 interruptions and may have difficulty with the usual stress encountered in the  
14 workplace.” Tr. 752. The ALJ rejected these statements because they “are not  
15 specific limitations, but vague statements that the claimant would have difficulty.”  
16 Tr. 58.

17 Defendant argues that the ALJ may reject an opinion that does not assign any  
18 specific limitations on a claimant. ECF No. 15 at 8 *citing Turner v. Comm’r of Soc.*  
19 *Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010). However, the Court in *Turner*  
20 found that the ALJ did not err in rejecting a provider’s opinion that a Plaintiff was  
21 disabled due to his posttraumatic stress disorder and did not address specific

1 limitations. 613 F.3d at 1222-23. Here, Dr. Nestler's opinion addressed specific  
2 functional abilities identified on the mental residual functional capacity form. Tr.  
3 751-52. Dr. Nestler recognized that Plaintiff's abilities in sustaining work activities,  
4 maintaining attendance, and handling stress was compromised. *Id.* The ALJ did not  
5 address these in his RFC determination. Therefore, the ALJ erred and will need to  
6 readdress Dr. Nestler's opinion upon remand.

7 **C. Esther Hunte, M.D.**

8 On December 22, 2017, Dr. Hunte completed a Treating Source Statement  
9 form detailing her opinion of Plaintiff's limitations. Tr. 904-07. These limitations  
10 included an inability to sit, stand, or walk for a combined total of eight hours a day, a  
11 prediction that Plaintiff would be off task more than 25% of the day if working full  
12 time, and a prediction that Plaintiff would miss four or more days of work each  
13 month if working full time. Tr. 904-05.

14 The ALJ gave the opinion little weight stating "[t]he undersigned agrees that  
15 the claimant has some restrictions, but these overall limitations appear out of  
16 proportion to the objective medical evidence." Tr. 57. Since the case is already  
17 remanded to address the medical opinions of Dr. Drenguis and Dr. Nestler, the ALJ  
18 will readdress Dr. Hunte's opinion on remand.

19 **2. Plaintiff's Symptom Statements**

20 Plaintiff challenges the ALJ's treatment of her symptom statements. ECF No.  
21 11 at 11-16.

1 It is generally the province of the ALJ to make determinations regarding the  
2 reliability of Plaintiff's symptom statements, *Andrews v. Shalala*, 53 F.3d 1035, 1039  
3 (9th Cir. 1995), but the ALJ's findings must be supported by specific cogent reasons,  
4 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative  
5 evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony  
6 must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th  
7 Cir. 1996); *Lester*, 81 F.3d at 834. "General findings are insufficient: rather the ALJ  
8 must identify what testimony is not credible and what evidence undermines the  
9 claimant's complaints." *Lester*, 81 F.3d at 834.

10 The ALJ found Plaintiff's "statements concerning the intensity, persistence,  
11 and limiting effects of these symptoms are not entirely consistent with the medical  
12 evidence and other evidence in the record for the reasons explained in this decision."  
13 Tr. 53.

14 First, the ALJ found that Plaintiff's statements concerning her physical  
15 limitations were "not consistent with the medical evidence of record that document  
16 rather mild findings and improvement in her symptoms with medical treatment." Tr.  
17 53. The ALJ then summarized the medical evidence in the record. Tr. 53-55. In  
18 doing so, the ALJ failed to specifically identify what medical evidence undermined  
19 specifically identifiable statements made by Plaintiff. The ALJ then stated that  
20 Plaintiff's "allegations of disabling mental symptoms are not consistent with the  
21 medical evidence of record that documents rather mild mental status examination

1 findings and improvement of her symptoms with medications.” Tr. 55. The ALJ  
2 followed this statement with a summary of the mental health evidence in the record.  
3 Tr. 55-60. By doing so, the ALJ failed to identify what medical evidence  
4 undermined specific statements Plaintiff made regarding her limitations. “General  
5 findings are insufficient: rather the ALJ must identify what testimony is not credible  
6 and what evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834.  
7 The Ninth Circuit has specifically addressed that ALJ determinations that make a  
8 generic non-credibility finding followed by a summary of the medical evidence does  
9 not meet the “specific” portion of the “specific, clear and convincing” standard.  
10 *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015). Therefore, by failing to  
11 identify what testimony was undermined by specific evidence, the ALJ failed to meet  
12 the specific, clear and convincing standard.

13 Second, the ALJ concluded that Plaintiff’s “allegations of disability are not  
14 consistent with the medical opinions that generally suggest that the claimant has  
15 considerable work-related abilities.” Tr. 56. The evaluation of a claimant’s symptom  
16 statements and their resulting limitations relies, in part, on the assessment of the  
17 medical evidence. *See* 20 C.F.R. § 404.1529(c); S.S.R. 16-3p. Here, the case is  
18 being remanded for the ALJ to readdress the medical source opinions in the file, and  
19 a new assessment of Plaintiff’s subjective symptom statements will be necessary.

20 / / /

21 / / /

1     **3. Lay Witness Testimony**

2             Plaintiff challenges the ALJ's rejection of statements made by Plaintiff's  
3 husband. ECF No. 11 at 16-17.

4             Lay witness testimony is "competent evidence" as to "how an impairment  
5 affects [a claimant's] ability to work." *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d  
6 1050 (9th Cir. 2006); 20 C.F.R. § 404.1513(a)(4). "[F]riends and family members in  
7 a position to observe a claimant's symptoms and daily activities are competent to  
8 testify as to her condition." *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993).  
9 An ALJ must give "germane" reasons to discount evidence from "other sources." *Id.*  
10 at 919. This case is already being remanded for the ALJ to properly address the  
11 medical source opinions and Plaintiff's symptom statements. Therefore, on remand,  
12 the ALJ will readdress the statements made by Plaintiff's husband.

13     **4. Step Four**

14             Plaintiff also challenges the ALJ's step four determination. ECF No. 11 at 17-  
15 20.

16             Since the ALJ has been instructed to readdress the medical opinions in the  
17 record, Plaintiff's symptom statements, and the statements of Plaintiff's husband, a  
18 new RFC determination will be required. 20 C.F.R. § 404.1545. A new RFC  
19 determination means the ALJ will also have to make a new step four determination.  
20 Upon remand, he will need to call a vocational expert to provide testimony at step  
21 four and, if necessary, step five.

## CONCLUSION

The decision whether to remand for further proceedings or reverse and award benefits is within the discretion of the district court. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate where “no useful purpose would be served by further administrative proceedings, or where the record has been thoroughly developed,” *Varney v. Sec’y of Health & Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by remand would be “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280 (9th Cir. 1990); *see also Garrison v. Colvin*, 759 F.3d 995, 1021 (9th Cir. 2014) (noting that a district court may abuse its discretion not to remand for benefits when all of these conditions are met). This policy is based on the “need to expedite disability claims.” *Varney*, 859 F.2d at 1401. But where there are outstanding issues that must be resolved before a determination can be made, and it is not clear from the record that the ALJ would be required to find a claimant disabled if all the evidence were properly evaluated, remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

The Court finds that further administrative proceedings are appropriate. *See Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014) (remand for benefits is not appropriate when further administrative proceedings would serve a useful purpose). Here, it is not clear from the record that the ALJ

1 would be required to find a claimant disabled if all the evidence were properly  
2 evaluated. Therefore, the Court remands this case for further proceedings consistent  
3 with this Order.

4 On remand, the ALJ shall weigh the opinions of Dr. Drenguis, Dr. Nestler, and  
5 Dr. Hunte, readdress Plaintiff's symptom statements, readdress the statements made  
6 by Plaintiffs husband, form a new RFC, and make a new step four determination. In  
7 addition, the ALJ should supplement the record with any outstanding medical  
8 evidence and take the testimony of a psychological expert, medical expert, and  
9 vocational expert at remand proceedings.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **GRANTED, in**  
12 **part**, and the matter is remanded for further proceedings consistent with  
13 this Order.

14 2. Defendant's Motion for Summary Judgment, **ECF No. 15** is **DENIED.**

15 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
16 enter this Order and provide copies to counsel, enter judgment in favor of the  
17 Plaintiff, and **CLOSE** the file.

18 **DATED** August 26, 2020.

19 s/ Rosanna Malouf Peterson  
20 ROSANNA MALOUF PETERSON  
21 United States District Judge